THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.21485 OF 2005

DATED:3.10.2005

Between:

Dileep Kumar

…Petitioner

And

The Special Officer & Joint Collector,

Machilipatnam Municipality

Machilipatnam, Krishna District and others

…Respondents

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ORDER:

The petitioner filed the instant Writ Petition seeking a declaration that the action of the respondents 1 to 3 in issuing work order and entering into agreement with fourth respondent by proceedings dt.4.7.2005 is arbitrary, illegal and without jurisdiction. He seeks a consequential direction to set aside the contract and direct the respondents 1 to 3 to issue work order to the petitioner.

The Machilipantam Municipality represented by its Special Officer issued a tender notice dt.21.3.2005 for construction of drain from Kotha Masjid Road to Narasimha Swamy Temple Culvert, and from Narasimha Swami Temple Culvert to China Vullingipalem Culvert. The petitioner and the fourth respondent submitted their

tenders along with necessary documents. According to the petitioner, the tender submitted by the fourth respondent is defective and that he quoted a less responsive amount than the petitioner. He gave a representation on 16.5.2005 requesting the first respondent to declare the tender of the fourth respondent as defective. As no orders are passed, he filed a writ petition being W.P.No.13436 of 2005 before this Court. By order dt.23.6.2005 this Court disposed of the said Writ Petition directing first respondent to consider the representation made by the petitioner. Thereafter, the petitioner also gave a detailed representation on 14.7.2005, but no orders are passed. Assailing the inaction, petitioner filed a contempt case being C.C.No.905 of 2005. According to the petitioner in the counter affidavit filed by respondents 1 to 3 herein in C.C.No.905 of 2005 they admitted that the fourth respondent did not fulfil the eligibility criteria at the time of submission of tenders, and in spite of the same, fourth respondent was given work order on 4.7.2005, which is assailed in the Writ Petition.

It is now well settled that the question of arbitrariness in awarding of contract can be raised only at the pre-award stage of contract. At the moment the contract is awarded, such argument is not available to an aggrieved person. He has to seek appropriate remedy in Civil Court. In **Radhakrishna Agarwal v. State of Bihar** the Supreme Court held that the power to enter into contract is not always regulated by the Constitution. The relationship of persons to the contract are regulated by the contract. The State as well as other persons to the contract are bound by the obligations in the contract. Though the relationship between the persons to the contract is not the relationship of master and servant, after entering into contract, the relations are no longer governed by the constitutional provisions, but by the legally valid contract. The remedy under Article 226 of the Constitution is not a proper remedy for redressing the grievance of the parties to the contract. The following observations of the apex Court in **Radhakrishna Agarwal v. State of Bihar** (supra) further lay down as under.

> ……Even if the appellants could be said to have raised any aspect of Art. 14 of the Constitution and this Article could at all be held to operate within the contractual field whenever the State enters into such contracts, which we gravely doubt, such questions of fact do not appear to have been urged before the High Court. And in any event, they are of such a nature that they cannot be satisfactorily decided without a detailed adduction of evidence, which is only possible in ordinary civil suits, to establish that the State, acting in its executive capacity through its officers, has discriminated between parties identically situated. On the allegations and affidavit evidence before us we cannot reach such a conclusion. Moreover, as we have already indicated earlier, the correct view is that it is the contract and not the executive power, regulated by the Constitution, which governs the relations of the parties on facts apparent in the cases before us.

In view of the settled position, the Writ Petition is not maintainable and it is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

3.10.2005

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